



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2012-0370]**

**Hours of Service of Drivers: U.S. Department of Energy (DOE); Application for Exemption**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of application for exemption; request for comments.

**SUMMARY:** FMCSA has received an application from the U.S. Department of Energy (DOE) for an exemption from the 30-minute rest break provision of the Agency's hours-of-service (HOS) regulations for commercial motor vehicle drivers. The exemption would enable DOE's contract motor carriers and their employee-drivers engaged in the transportation of security-sensitive radioactive materials to be treated similarly to drivers of shipments of explosives. The exempted drivers would be allowed to use 30 minutes or more of attendance time to meet the HOS rest break requirements providing they do not perform any other work during the break. FMCSA requests public comment on DOE's application for exemption.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

**ADDRESSES:** You may submit comments identified by Federal Docket Management System Number FMCSA-2012-0370 by any of the following methods:

- Federal eRulemaking Portal: [//www.regulations.gov](http://www.regulations.gov). Follow the online instructions for submitting comments.
- Fax: 1-202-493-2251.

- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to [www.regulations.gov](http://www.regulations.gov), including any personal information provided. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments received, go to [www.regulations.gov](http://www.regulations.gov), and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the U.S. Department of Transportation's online privacy policy at [www.dot.gov/privacy](http://www.dot.gov/privacy) or the complete Privacy Act Statement in the **Federal Register** published on December 29, 2010 (75 FR 82133).

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the “help” section of the Federal eRulemaking Portal Web site. If you

want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket, and we will consider late comments to the extent practicable.

**FOR FURTHER INFORMATION CONTACT:**

Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Bus and Truck Standards and Operations; Telephone: 202-366-4325. E-mail: [MCPSD@dot.gov](mailto:MCPSD@dot.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also

specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

### **Request for Exemption**

Certain motor carriers under contract to the U.S. Department of Energy (DOE) transport “security-sensitive radioactive materials.” DOE notes that the term includes transuranic waste; spent nuclear fuel; radioactive sources classified as category 1 and 2 materials by the International Atomic Energy Agency, including “Highway route controlled quantities,” as defined in 49 CFR 173.403; or known radionuclides in forms listed as RAM-QC by the Nuclear Regulatory Commission.

DOE requests a limited exemption from the HOS regulation pertaining to rest breaks [49 CFR 395.3(a)(3)(ii)], to allow contract driver-employees transporting security-sensitive radioactive materials to be treated the same as drivers transporting explosives, as provided in § 395.1(q). Section 395.1(q) states that operators of commercial motor vehicles (CMV) carrying Division 1.1, 1.2, or 1.3 explosives subject to the requirement for a 30-minute rest break in § 395.3(a)(3)(ii) may use 30 minutes or more of “attendance time” to meet the requirement for a rest break. Section 395.3(a)(3) becomes effective on July 1, 2013.

DOE contends that shipments of security-sensitive radioactive materials require a team of two drivers and the use of a sleeper berth to minimize risk and expedite delivery in a safe and secure manner. DOE asserts that granting the exemption would allow team drivers to manage their en-route rest periods efficiently and also perform mandated shipment security surveillance, resulting in a safe and secure driving performance during a long distance trip.

DOE states that it has instituted several technical and administrative controls to ensure the effective use of driver on-duty and rest-break time, which would remain in effect under the requested exemption. They include the following:

- Real-time tracking and monitoring of transuranic waste and security-sensitive shipments using DOE's satellite-based systems.
- Use of electronic on-board recorders on trucks, which is contractually required by for motor carriers involved in the Waste Isolation Pilot Plant to ensure compliance with driver HOS rules.
- Continuous monitoring of the safety performance of DOE-qualified motor carriers using the FMCSA Compliance Safety Accountability Program's Safety Measurement System, and DOE's Motor Carrier Evaluation Program.

Further details regarding DOE's safety controls can be found in its application for exemption. The application can be accessed in the docket identified at the beginning of this notice. DOE contends that these controls enable them to achieve a high level of safety and security for transportation of security-sensitive radioactive materials.

DOE anticipates no safety impacts from this exemption and notes that in the preamble to the FMCSA final rule on the "Hours of Service of Drivers," dated December 27, 2011 (76 FR 81134), the Agency addressed concerns from commenters regarding rest breaks for carriers of hazardous materials. Section 395.1(q) allows drivers who are required by § 397.5 to attend a motor vehicle transporting certain types of explosives but perform no other work, to log at least a half-hour of their attendance time toward the break. The Agency cited a recent study showing that on-duty breaks reduce the risk of crashes after the break [76 FR 81154].

DOE believes that its contract employee drivers should be allowed to follow the requirements in § 395.1(q) when transporting shipments of security-sensitive radioactive materials. DOE believes that shipments made under the requested exemption would

achieve a level of safety and security that is at least equivalent to that which would be obtained by following the normal break requirement in § 395.3(a)(3)(ii).

DOE estimates that 30 power units and 53 drivers would currently be eligible for the exemption, if granted. The proposed exemption would be effective from July 1, 2013 through June 30, 2015, the maximum period allowed by § 381.300. A copy of DOE's exemption application is available for review in the docket for this notice.

### **Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315(b)(4), FMCSA requests public comment on DOE's application for an exemption from certain provisions of the driver's record of duty status rules in 49 CFR part 395. The Agency will consider all comments received by close of business on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will consider to the extent practicable comments received in the public docket after the closing date of the comment period.

**Issued on:** January 8, 2013

---

Larry W. Minor  
Associate Administrator for Policy

**[FR Doc. 2013-00510 Filed 01/11/2013 at 8:45 am; Publication Date:  
01/14/2013]**